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CURRENT TOPICS

Lessons of History

THE best outline history of the rapid encroachments of the Nazis on the bastions of civilisation is to be found in a book published on 8th August, 1946, by His Majesty's Stationery Office and entitled "The Trial of German Major War Criminals: Opening Speeches of the Chief Prosecutors" (price 2s. 6d.). The period covered by the speeches extends back to the early obscure origins of the Nazi party, but the actual scope of the trial, to quote from Mr. Justice JACKSON's speech, consists of "the developments of a decade, covering a whole continent and involving a score of nations, countless individuals, and innumerable events." The more extensive the crimes investigated the greater the call on the advocate's talents, especially in the tasks of selection and emphasis, in opening the case to the tribunal. The advocates of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics all emerged from their tasks with flying colours. One does not know which to admire most, whether it is the acute analysis of the legal position by Mr. Justice JACKSON, the eloquence of Sir HARTLEY SHAWCROSS, the profound philosophical and historical examination of the Pan-Germanism of the Nazis and their forerunners by M. FRANCOIS DE MENTHON, or the masterly marshalling of facts by General R. A. RUDENKO, without the apparent adornments of rhetoric, but with the consummate art that conceals art in selecting bare facts and importing the right emphasis into each. Mr. Justice Jackson's comparison of international law with the common law was notable: "The fact is that when the law evolves by the case method, as did the common law, and as international law must do if it is to advance at all, it advances at the expense of those who wrongly guessed the law and learned too late their error." Equally notable was Sir Hartley Shawcross's phrase "Let us once again restore sanity," M. de Menthon's "Without your verdict history might incur the risk of repeating itself," and General Rudenko's stark "May justice be done!" Lawyers and laymen alike may learn much from these opening speeches.

Co-operation between Law Societies

AN example of co-operation between the legal professions in different countries whose legal systems are based on the common law comes from Australia, where the President of the Law Council of Australia, Mr. DAVID MAUGHAN, K.C., said, in his annual address, on 27th April, 1946 (*Law Institute Journal* of 1st June, 1946): "As President I have instituted the practice of interchanging our annual report with the annual reports of various law associations overseas, namely, the General Council of the Bar (England), the Incorporated Law Society (England), the Canadian Bar Association, the American Bar Association, the South African Bar Association, and the New Zealand Law Society." Many of the problems of modern economic society recur in similar forms in different countries, and knowledge of the methods of approach to the legal aspects of these problems in the different English-speaking countries is bound to be of the greatest value to each one of them. One of the matters to which Mr. Maughan referred in his address was the transfer of the power of law-making from the Australian Parliament to the Governor-General in Council under the provisions of the National Security Act. While he agreed that it was necessary to confer wide powers on the executive in war time, he said that the exercise of such a power was only justifiable when it was impossible to wait for Parliament to act, or in matters of detail on subjects on which Parliament had already passed a law. Mr. Maughan also referred to the continued encroachment on the right to legal representation, and said that proceedings were lengthened rather than shortened by being conducted by persons not members of the legal profession, and litigants' interests were prejudiced by being represented by untrained advocates, many of whom have not the same ethical standards as lawyers. "There is no body," he continued, "which has any right to discipline non-professional advocates. Furthermore, cases have been reported to us showing that some non-professional advocates charge higher fees than members of the legal profession, and the Minister in charge of the landlord and tenant regulations went so far in the last code as to insert a regulation giving these non-professional advocates a right to charge fees." The fact that reference to these parts of Mr. Maughan's address is contained in the August issue of the *Law Society's Gazette* is some indication that the matters with which he dealt are receiving the attention of the Council.

Contributory Negligence and the Last Opportunity

ALTERING the common law by Act of Parliament is not so simple a process as it is sometimes thought to be. The common law is not always clearly defined and it is then a problem whether a new Act should declare the old law or create new law in a particular case. The Law Reform (Contributory Negligence) Act, 1945, has already been much used in practice, and whether it will or will not cause much litigation, it is important for practitioners to know where they stand with regard to some of the more doubtful points that arise on its construction. Unless and until authoritative judicial decisions form a code of interpretation practitioners will have to look to the text writers for guidance. A notable

and brilliant essay in such guidance comes from the pen of Dr. GLANVILLE L. WILLIAMS. Writing in the July issue of the *Modern Law Review* on the applicability of the 1945 Act to cases of last opportunity, he states that the greatest impediment to a correct appreciation of the difference between last opportunity and remoteness of damage lies in that branch of the law of remoteness referred to as *novus actus interveniens*. Citing the 10th edition of "Salmond on Torts" (p. 137 *et seq.* and p. 144), he submits that a study of the cases on *novus actus interveniens* shows that a *novus actus* does not make the damage too remote where it was foreseeable. Dr. Williams concludes that it would be unfortunate if we were compelled to continue the rule of last opportunity when we now have a statutory power of apportionment. Dr. Williams adds that the only case on the Act which has been reported, *Jay and Sons* v. *Veevers Ltd.* [1946] 1 All E.R. 648, leaves the question open "where LYNSKEY, J., mentioned that neither party had the last opportunity, and proceeded to apportion the damages." Dr. Williams handles a puzzling problem in a masterly manner. Though in most motor collision cases the respective acts of negligence of the plaintiff and the defendant are so close in time as to exclude the applicability of the doctrine of last opportunity (*Swadling* v. *Cooper* [1931] A.C. 1), there are many cases in which it still does apply, and Dr. Glanville's opinion will be a welcome reinforcement of the opinions of legal advisers until the courts pronounce on the subject.

The General Medical Council

A CORRESPONDENT writing in the *British Medical Journal* of 20th July, 1946, raised an issue which has been very much in the forefront of public attention since the case of *Hennessy* v. *Boyanton* was decided last June. It will be recalled that in that case CHARLES, J., held to be a slander a statement which was practically the same as one on which the General Medical Council had acted in striking the plaintiff off the medical register. The writer, in referring to certain projected reforms of the General Medical Council, made his own proposals, every one of which, we venture to submit, is sound from the point of view of both law and common-sense. The first proposal was that a doctor ought to be allowed legal representation at all proceedings where his professional conduct is under review. The writer included applications for reinstatement, which at present are made in writing and considered by a committee, without the doctor or his advocate being heard. This proposal must be right, because if reinstatement as a publican or moneylender cannot be obtained through the post but only after a judicial hearing, the same rule should apply *a fortiori* to reinstatement as a doctor. The writer further proposed that rules of evidence should be strictly adhered to. It does not need more than a moment's reflection to understand that it is right and fair, subject to well-recognised exceptions, to exclude hearsay, or, in other words, gossip. The English law of evidence is indeed based on common-sense, and since the Evidence Act, 1938, brought it up to date, we know of no substantial complaint against it. The other suggestions of the writer as to the time for appeal, the grounds of appeal, the notices to produce, and the legal qualifications of the tribunal, are all fairly obvious and quite sensible. Here is, without doubt, a case for reform, but it is well that reformers should be reminded that English jurisprudence is the only foundation on which a durable superstructure can be built.

Price Controls

WE are often assured that the object of price control law is to avoid inflation. When, however, a particular scarcity disappears, the reason for its price control will go and gradually an army of price enforcement officers and other temporary civil servants will find their way back to industry to relieve labour shortages and scarcities elsewhere. The courts also will benefit by a reduction in the number of unpleasant "black market" cases. Has this process started, and if so, what is its progress? The editor of the City Notes in *The Times* deserves our gratitude for his periodical surveys of the general progress of inflation, for the inflationary trend, as the latest article (*The Times*, 2nd September) states, has not altered. Notable figures are cited. "Of the total rise of 63–64 per cent. in weekly wage rates since 1939, over 10 per cent. has taken place this year, and half of that during the last four months. The rise in wholesale prices of industrial materials and manufactures (B.O.T. index) in July was greater than the whole of the rise between January and June. *The Times* index of prices of industrial materials rose by 5 per cent. in August—the biggest monthly rise since December, 1939." The writer quotes further figures to show that the increase in the quantity of money has been less than the price-wage increase and much less than the war average. The current rate of increase in the price-wage level, concludes the writer, represents a rate of destruction of war savings, fixed interest investments generally, pension fund and life insurance contributions, actual pensions and such like, which no free society could tolerate for long. It is possible, he wrote, that the drive for increased effort and productivity on the part of labour offers the best chances of short-run results, though informal direct restraint of wages and price increases must also be used to the utmost. On this authority it would not seem that the removal of an appreciable number of controls can be expected in the near future. If, however, peace is assured and co-operation is substituted for rivalry among the nations, inflationary trends will inevitably disappear and price controls will have to go.

Local Government Boundaries: Commission's Notice on Priorities

THE Local Government Boundary Commission has announced that the response to its letter addressed to county and county borough councils in April asking for information as to the boundary proposals they have in contemplation has enabled it to realise the problem as a whole and to appreciate the magnitude of its task. Notice of positive proposals has been received from eighty out of eighty-three county boroughs, and from forty-two out of sixty-one county councils, and in addition a number of proposals have been made by county districts for the creation of new county boroughs. In many cases it is obvious that the problems of various authorities are likely to be inter-related. The Commission has established an order of priority for the review of county and county borough areas, and cases have been divided into two broad categories. Category A comprises those areas whose problems, considered individually and collectively, are considered to be the more urgent. Work of investigation is already proceeding in a number of special priority cases, and it is the intention to begin the review of areas in category A as soon as possible and to proceed as expeditiously as the complexity of the various questions and the resources of the staff permit. Due notice will be given to each authority of the date on which a review of its area will commence. With regard to those cases placed in category B the Commission announces that none, unless found to be inter-related with an area in category A, will be reviewed before July, 1947, and possibly not until a much later date. Moreover, subject to any question of inter-relation, each authority in category B will be given at least three months' notice of the Commission's intention to commence a review of its area, so that in the meantime the authorities concerned may devote their attention to their many other urgent problems, undisturbed by consideration of boundary issues. No such notice in the earliest case in category B will be issued before 1st April next year. The Commission wishes it to be clearly understood that at this stage it is concerned solely with the review of county borough and county council areas, which includes the alteration of a county area by the creation of a county borough, and not with other county district questions. County councils, county borough councils and county districts who have submitted formal representations for county borough status have been directly informed by the Commission of their position as regards priorities.

TRUSTS FOR THE BENEFIT OF ANIMALS

A TRUST for the benefit of particular animals is valid, and the necessary fund will be set aside in administration proceedings (*Re Dean, Cooper-Dean* v. *Stevens* (1889), 41 Ch. D. 552). Animals as such cannot, however, it seems, be the beneficiaries under a *charitable* trust; but, as Lord Greene, M.R., pointed out in *Commissioners of Inland Revenue* v. *National Anti-Vivisection Society* [1946] 1 K.B. 185, a trust for the benefit of animals generally may be charitable either from the material point of view, because it promotes the good of animals useful to mankind, or from the moral, because it promotes feelings of humanity and morality, thus elevating the human race.

An instance of the first class may be found in the improvement of livestock (*Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society* [1928] 1 K.B. 611; 44 T.L.R. 59). The animals' hospital in *University of London* v. *Yarrow* (1857), 1 De G. & J. 72, appears to have been considered as falling within the second class since, although it was regarded as intended for domestic animals, the court would have come to the same conclusion had it been for animals of any kind. The purely moral point of view is illustrated by the Home for Lost Dogs (*Re Douglas, Obert* v. *Barrow* (1887), 35 Ch. D. 472).

The prevention of cruelty to animals is clearly a charitable object, even, according to Lord Greene's judgment in the *Anti-Vivisection* case, *supra*, if they are noxious to man. Thus, the Royal Society for the Prevention of Cruelty to Animals (*Re Douglas, supra*), a society for promoting prosecutions for cruelty to animals (*Re Vallance*, Seton, 5th ed., p. 1141) and a gift for promoting humane slaughtering and municipal abattoirs (*Re Wedgwood, Allen* v. *Wedgwood* [1915] 1 Ch. 113) have all been held charitable. Further, according to Lord Greene, a trust really for the benefit of animals is charitable even apart from the suppression of cruelty; though this does not apply to noxious animals, as there is no resulting moral benefit, mankind being entitled to defend itself against them. The animal sanctuary in *Re Grove-Grady, Plowden* v. *Lawrence* [1929] 1 Ch. 557, was held not to be a charity only because no animal was allowed to be killed or molested even if noxious to man, or even in its own interests or those of the other animals.

Though a society for the protection of animals liable to vivisection would be charitable, as the law stands, one for the total abolition of vivisection would not. This was decided by the Court of Appeal in the *Anti-Vivisection* case, *supra*, overruling *Re Foveaux, Cross* v. *London Anti-Vivisection Society* [1895] 2 Ch. 501, which had been approved by the Irish Court of Appeal in *Re Cranston, Webb* v. *Oldfield* [1898] 1 Ir. R. 431, and by the English Court of Appeal in *Re Wedgwood, supra*, and contrary to the Irish case of *Armstrong* v. *Reeves* (1890), 25 L.R. Ir. 325.

The majority judgments proceeded on the uncontradicted evidence given before the Special Commissioners of the immense benefits to medical science arising from vivisection in the prevention and treatment of diseases such as malaria, typhoid and diphtheria by inoculation, vaccines and drugs, and in the treatment of burns, wound infections and gas gangrene. The society's objects further included, as a logical consequence of their tenets, opposition to inoculation of the armed forces against typhoid and of the civil population against diphtheria.

MacKinnon, L.J., went so far as to say that the purposes of the society, so far from being beneficial to the community so as to fall within Lord Macnaghten's fourth category of charitable objects, might with reason "be stigmatized as malignantly designed for the injury of the community." Both he and Tucker, L.J., regarded the question of benefit as one for the court to decide on the evidence, and unhesitatingly came to the conclusion that the benefit outweighed any moral detriment.

Lord Greene, M.R., dissented. He considered that on the evidence it was established that vivisection involved the ill-treatment (to use a less extreme word than "cruelty") of animals. Whether this was justifiable or not was a moral question, but even if justifiable infliction of pain could not be called cruelty, suppression of cruelty was not a necessary factor in charitable trusts for animals. The prevention of cruelty to, or the prevention of the infliction of pain upon, animals, and the benefit of animals not noxious, were good charitable objects which had been held to be beneficial to the public, and a particular exemplification of those objects could not be said not to be beneficial merely because in the particular case the achievement of those objects would deprive man of consequential benefits, however important. The court could not be asked to weigh material against moral benefit. This was the basis of Chitty, J.'s judgment in *Re Foveaux, supra*.

Russell, J., in *Re Hummeltenberg, Beatty* v. *London Spiritualistic Alliance* [1923] 1 Ch. 237, considered the question of benefit was one to be decided on the evidence, and expressed a doubt whether anti-vivisection would, in the light of later knowledge, now be held charitable. But that case (which dealt with a gift for training mediums) was not one falling within a recognised class of charity. No attempt had ever been made to argue that a gift falling within the first three of Lord Macnaghten's categories failed on the ground that on balance it was calculated to injure rather than benefit the community. The same was true of the fourth category; otherwise it would always be possible by adducing further evidence to attack a society's status, to the great confusion of trustees and others. Even if a subsequent increase in the benefits of vivisection were material, they were already very great in 1895, and Chitty, J., had the report of the Royal Commission before him.

The principle enunciated by Lord Greene has far-reaching consequences. It seems, first of all, to be established that the donor's intention cannot make a gift charitable which would not otherwise be so. Otherwise, as Russell, J., observed in *Re Hummeltenberg*, trusts might be established in perpetuity for all kinds of fantastic (though not unlawful) objects, of which the training of poodles to dance might be a mild example. But it appears, nevertheless, that the donor's intention is material to the extent that his primary object must be to benefit mankind.

In *Re Cranston, supra* (followed in England in *Re Slatter, Howard* v. *Lewis* (1905), 21 T.L.R. 295), the testatrix made a gift to a society for promoting vegetarianism, because she thought the killing of animals for food was cruel and demoralising, and that vegetarianism would improve health and foster a spirit of humaneness. The gift was held charitable, notwithstanding recognition by the court that the practice might be in some respects injurious. FitzGibbon, L.J., went so far as to say that "any gift which proceeds from a philanthropic or benevolent motive, and which is intended to benefit an appreciably important class of our fellow-creatures (including, under decided cases, animals), and which will confer the supposed benefit without contravening law or morals, will be charitable."

It seems fairly clear that, as regards the first three categories of charity, proof of moral or even physical detriment would not generally prevent the gift from being charitable in law. Lord Greene instanced dole charities, which are valid, though the court will not, in directing schemes, sanction their augmentation, regarding them as pauperising the parish. Lord Herschell, in *Pemsel's* case [1891] A.C. 531, at p. 572, observed that there was no common consent as to the kind of assistance men should render to their fellows, and that there were some even who held that hospitals and almshouses discouraged thrift, and on the whole did more harm than good. The relief of imprisoned debtors was formerly another instance; it may be doubted whether the physical good outweighed the moral harm. Religious trusts need not be for the benefit of the Established Church or even of

Christianity; the benefit of the Jewish religion is charitable. (See judgment of Lord Parker in *Bowman* v. *Secular Society, Ltd.* [1917] A.C. 406.)

The doctrines advocated will not prevent the gift from being charitable. If they are adverse to the foundations of religion or subversive of all morality, this will still be so, though the gift may be void as contrary to public policy. The case of Joanna Southcott's writings is a striking instance (*Thornton* v. *Howe* (1862), 31 Beav. 14). The teaching of doctrines such as Socialism, or even natural theology or a system of conduct based on natural knowledge as opposed to religion, may be charitable (*Russell* v. *Jackson* (1852), 10 Hare 204; judgment of Lord Parker in *Bowman* v. *Secular Society, supra*, commenting on *Briggs* v. *Hartley* (1850), 19 L.J. Ch. 416).

If the majority judgments in the *Anti-Vivisection* case are to be followed, the court will be drawn into all sorts of ethical controversies between moral good and physical harm and *vice versa*, and may have to adjudicate on the principle of doing evil that good may come. An obvious instance would be a gift for birth control, whether educational or for the benefit of birth control clinics. The "common understanding" proposed as a test by Holmes, L.J., in his dissenting judgment in *Re Cranston, supra*, applies only to determine whether an object falls within the class of charity, and does not assist where there is a conflict of evidence as to benefit to the community.

COMPANY LAW AND PRACTICE

DOCUMENTS REQUIRED IN A VOLUNTARY LIQUIDATION

SOME little time ago I dealt with the various documents in connection with a company's affairs, which are required to be lodged with the Registrar of Companies, and this week I propose to follow a similar course in the case of a company which is being wound up voluntarily. This may have the effect of recalling one or two requirements to the minds of some readers who have not had to advise in such a case for some time, and it does also give a fairly clear picture of the machinery which applies to a voluntary winding up.

Section 225, which is the first section in that part of the Companies Act which deals with voluntary winding up, lays down the various methods by which a company may be so wound up. An ordinary resolution requiring the company to be wound up will suffice only in the now rather unusual case of the articles fixing a time at which the company shall be dissolved. A special resolution is necessary in all other cases, except where the company resolves that it cannot continue its business by reason of its liabilities and that it is advisable to wind up, in which case an extraordinary resolution is sufficient. These special and extraordinary resolutions have to be forwarded to the registrar and recorded by him in the same way as any other special or extraordinary resolution by virtue of s. 118, and that section also expressly provides for the forwarding and recording of an ordinary resolution for winding up.

The responsibility for forwarding these resolutions, which must be signed either by the chairman of the meeting at which they were passed or the liquidator, is on the company, and a penalty is imposed on it and on every officer who is in default. The next document, however, in point of time which requires to be delivered is the responsibility of the liquidator. This is the notice of the liquidator's appointment, and must be delivered for registration within twenty-one days of the appointment.

After these documents have been dispatched there is a comparatively peaceful period so far as delivering documents is concerned. The next provision on this point is found in s. 284. That section applies where the winding up is not completed within one year, and in that case the liquidator must, until the winding up is completed, at the "prescribed" intervals send to the Registrar of Companies a statement in the "prescribed" form and containing the "prescribed" particulars with respect to the proceedings in and position of the liquidation.

The intervals are prescribed by Winding-up Rule 194, which says they are to be half-yearly after the first year. The form and the particulars are prescribed in that and the succeeding rule. An interesting point, perhaps just worth noting here, is this: the first class of documents mentioned in this article have to be forwarded to the Registrar and recorded by him, and the second class have to be delivered to the Registrar for registration. The result of this is that both classes of documents get on the file and are available for the inspection of the public. Section 284, when dealing with the statement with respect to the position of the liquidation, says that the liquidator is to "send" the statement, and in order to be allowed to inspect such a statement a person must state in writing that he is a creditor or contributory of the company.

Rule 194 further requires the liquidator to verify every such statement by an affidavit, and also provides that as soon as the liquidation is completed a final statement is to be sent forthwith as soon as the assets have been fully realised and distributed. Though s. 284 only provides for one statement, Winding-up Rule 194, by prescribing the form in certain circumstances, requires two or more different statements to be sent. In the notes contained in Form 92, which is the form for the main statement, it is stated that where the liquidator carries on a business a trading account must be forwarded as a distinct account, and the totals of receipts and payments must alone be set out in the main statement. Form 94 is the form prescribed for such a trading account. Of all the documents required in a voluntary winding up, this statement of the position is the one failure to send which is penalised most severely. The penalty is for a liquidator in default a fine of £50 a day.

Similarly, Winding-up Rule 194 also prescribes two further forms on which the statement is to be made. There is one on which information must be given as to any dividend or composition that has been declared payable and as to what part thereof has not been paid, and the next form is one on which information must be given of what surplus assets have been declared payable to contributories and what amounts have not in fact been paid.

This section and this rule, therefore, take care of all the necessary statements of the position in the winding up where the liquidation takes some considerable time to complete. The final account by the liquidator is, however, provided for by s. 236. That section provides that as soon as the affairs of the company are fully wound up the liquidator is to make up an account showing how the property of the company has been disposed of and call a general meeting of the company for the purpose of laying before it and explaining the account.

Within one week after the meeting the liquidator is to send to the Registrar a copy of this account, and in addition thereto a return either of the holding of the meeting and of its date or that it was duly summoned but there was no quorum present at it. This account and these returns are required by the Act to be sent rather than delivered or forwarded, but in this case, in contradistinction to the other accounts which were required to be sent, provision is made for the Registrar to register them, and, indeed, that registration is a key point in the process of the dissolution of the company, for within three months of their registration the company is deemed to be dissolved. The only difference in the case of a creditors' voluntary winding up is that a meeting of creditors has to be called as well and a return made of that meeting.

There is, however, even at this stage of the proceedings, one more resolution that the company is empowered and will very often wish to pass. That is the resolution dealt with by s. 283, which provides that where a company has been wound up and is about to be dissolved the books and papers of the company may be disposed of in a member's voluntary winding

up in the way in which the company may by extraordinary resolution direct. A copy of this resolution, like any other special resolution, has to be forwarded to the Registrar and recorded by him. In the case of a creditors' voluntary winding up, the method of disposal of the company's books and papers is in the hands of the committee of inspection, or if there is no committee, in the hands of the creditors.

This has really pursued the whole course of a voluntary winding up, but there is one other document which is sometimes required to be delivered to the Registrar, namely, a copy of an order of the court deferring the date at which the dissolution is to take effect. In both s. 236, which deals with members' voluntary winding up, and s. 245, which deals with creditors' voluntary winding up, there is a proviso (after the subsection which states when the company shall be dissolved) that the court may on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which dissolution is to take effect, and a similar subsection follows the two sections saying that it is the duty of the person who makes a successful application for such an order to deliver an office copy to the Registrar for registration.

A CONVEYANCER'S DIARY

REQUISITIONING OF REAL ESTATE

In the *Sunday Times* of 8th September, 1946, the main leading article was contributed by Sir Harold Bellman and was entitled "Who is Keeper of the Public Conscience?" Sir Harold stated that "By the term public conscience . . . I mean to convey proper sensitivity to the ethical basis of the relations between the State and its citizens," and his proposal is for a "strong independent body with terms of reference that would constitute it, in effect, the keeper of the public conscience . . . The Executive Government should have no more control over it than it has over the Lord Chief Justice." In his argument, Sir Harold states that "It may be objected that the courts of law serve the purpose I have in mind." But he says, "The short answer is that the courts administer the law, whereas I am rather concerned with the *sources* of the law and its character, whether it is equitable or inequitable."

I am not chiefly concerned here with the merits of the proposal. No doubt a useful purpose was served by the Law Revision Committee, which was an unnecessary war casualty and ought to be revived. It was mainly concerned with matters of private law, but its terms of reference could well be extended. But that committee was charged only with making reports, which Parliament usually accepted and gave effect to, and it was always subject to the jurisdiction of Parliament. But, when thought out to its conclusion, Sir Harold's proposal involves the creation of something much more like the Supreme Court of the United States, charged with the scrutiny of the Acts of Parliament itself, though, unlike the Supreme Court, from a moral standpoint and not a legal one. Any such proposal appears to strike at Parliamentary sovereignty, which is the basis of our constitutional law. I doubt if such a plan would commend itself to lawyers, whatever their political complexion, and certainly not without the support of an overwhelming argument.

In support, Sir Harold quotes a number of undeniable unfairnesses in existing statute law, but a substantial part of his argument is taken up with a particular instance, not of law, but of administration. The case stated is as follows: "A small private hotel, situated in a country market town, was requisitioned in 1942, having previously been entirely redecorated and otherwise put in good order throughout. It was occupied by the military for only a few months and then remained vacant for the rest of the war, the authorities meanwhile paying a requisition rental of £85 a year." So far there is nothing special about the case, though no doubt the owner thought the compensation too low, as it is generally thought to be. "After a lapse of three years, the owner, observing that the property was not occupied, applied for its return, but this was refused." The refusal is not abnormal, and was not in itself necessarily unreasonable, though circumstances might have proved it so. We now approach the main point. "Subsequently, various departments of local government in the county, presumably prompted by the requisitioning authority, exercised pressure to secure a tenancy for departmental purposes." I am not quite sure what this sentence means, but I think it is intended to imply that the departments sought to obtain a tenancy for purposes for which continued requisitioning would have been unlawful, and that they were backed by threats, express or indirect, from the requisitioning authority to continue the requisitioning if the owner did not grant the tenancy. If that really happened, the requisitioning authority was guilty of a grave impropriety and one which cast immediate doubts on the *bona fides* and therefore the legality of the requisitioning. If there was evidence to support the suggestion, the owner could have taken action in the courts. Although the courts will not review acts done *bona fide* and *intra vires* under the emergency laws, they will declare invalid action taken *mala fide*, i.e., from an improper motive, or *ultra vires*. See *per* Lord Greene, M.R., in *Carltona, Ltd.* v. *Commissioners of Works* 2 [1943] All E.R. 560. If the requisitioning is declared unlawful it would follow that damages for trespass are recoverable against the town clerk, or other requisitioning authority, personally.

Sir Harold continues: "The owner, however, was not prepared to let his property and said so. The unethical sequel came when the urban district council, without serving notice on the owner and apparently by arrangement with the requisitioning authority, took over the house and installed a family on each of the three floors, drawing from each a rental stated to be 25s. weekly. When questioned, the clerk to the council is reported to have justified his authority's action on the ground that had his council not taken the property over the owner might have sold it at a profit!" Sir Harold then points to the absurdity of this argument in the mouth of the officer of a public body which was itself making a handsome profit on the transaction. The whole story, it must be remembered, is cited to show that the *sources* of law need supervision, it being stated that the courts are of no assistance as they only administer the law. The underlying assumption apparently is that if this story is true the owner has no legal redress.

But if those facts can be established, the courts would certainly give relief. I gather that the owner did not sue for it. Exercises of the power to take possession and all other emergency powers must be strictly within the four corners of the relevant regulation and of the statute which gives the regulation the force of law. They must also be *bona fide*. There is, so far as I can find, no legal power to take possession of property for the purpose of preventing the owner selling it at a profit. If the clerk, to whom personally the power to take possession was probably delegated by the Minister, really said anything of the kind alleged, he put himself hopelessly in the wrong. That the motives behind the whole transaction were improper is also supported by the earlier story as to pressure (if capable of proof). It might also be suggested that a collateral motive was to make a profit for the council out of its licences: this motive also would be improper. If anything like the facts alleged can be proved, and I must assume that they can be, else they would not appear from such a pen in such a journal, the owner could undoubtedly get a declaration of the court that the taking of possession was unlawful and would recover very substantial damages for trespass against the clerk.

I think that people are unduly nervous about attacking the officers of the central and local governments who exercise these powers. No doubt it was a thing to avoid doing while

war was raging; no doubt the powers are very wide; and no doubt they are mostly exercised from proper motives and *intra vires*, however unhappy the consequences may be. But the war is over, and in any case these officers were never above the law: they were and are amenable to the courts. Obviously the alleged wrong motive would require full proof. But a careful preliminary correspondence and interviews may well elicit statements which can be used against the maker or against the body of which he is an officer or member. In this instance, at least, a damaging admission has apparently been procured.

I myself had a case some months ago very like Sir Harold's. The local authority had asked leave to repair a war-damaged house, representing that the owner would get the disposition of it when they had finished. At that point he found a purchaser, but the house was requisitioned. When questioned, the officials and a member of the council's housing committee expressed anger at the owner's action, saying that they had only meant him to dispose of it by letting it or living in it. They also said that they were determined to stop the owner making a profit by sale. On advice, the town clerk concerned was threatened with legal proceedings, the motive not being *bona fide*; he gave way and released the house. The owner duly sold it at a good price, so that eventually no case for damages arose and the town clerk escaped them. The owner was also helped by the fact that the requisitioning notice, dated July, 1945, stated that possession was being taken to accommodate "refugees from enemy attack," a ground impossible at a date when there were no such attacks to take refuge from. But the substantial point was that the act was not done for a purpose authorised by the statute or regulation.

Certain other considerations should be borne in mind in these cases. First, the powers given by the regulation are powers of the Minister, who delegates them to an individual, usually the clerk of the local authority. It is the delegate who takes possession, and it is he who can be sued personally as a trespasser; he is in someone else's house, and the onus is on him to justify his presence by pointing to statutory provisions which exactly cover the case. Even then, as I have explained, it is open to the plaintiff to impugn his motive. If the defendant loses, he will have to pay, and although public bodies generally indemnify their servants, officials normally do not relish litigation against themselves personally, for a variety of reasons. The correspondence should always keep the question of personal liability well to the fore. Again, though in the cases discussed above the act itself was unlawful as being *mala fide*, cases can arise where the act is lawful, but the doing of it involves the commission of a tort or the breach of a contract. Thus, suppose that the town clerk recklessly tells A that his house is not going to be requisitioned, intending A to act thereon, and A does act thereon. The town clerk then requisitions the premises for some proper cause. I suggest that he is still personally liable in damages for the tort of deceit, if A, through relying on his reckless statement, suffers damage. Or suppose that the town clerk promises not to requisition Blackacre if A will take a lodger. A does so. There is a contract, since consideration moves from A. Blackacre is then requisitioned for a proper reason. But the town clerk in requisitioning it is personally guilty of a breach of contract.

Space does not allow me to elaborate further. But I hope that I have said enough to show (i) that acts of the sort discussed in Sir Harold Bellman's example do not prove an injustice in the law or the law-makers, but an illegality for which redress can be obtained; and (ii) that the officers who carry out requisitioning are personally more vulnerable than the public (and doubtless some of the officers themselves) have come to suppose.

LANDLORD AND TENANT NOTEBOOK

SIMPLIFIED DRAFTING

In a letter signed "Managing Clerk" which appeared in our issue of 24th August (90 Sol. J. 404), the writer queried the practicability or advisability of introducing reforms advocated in our issues of 4th May and 8th June (*ib.*, pp. 206 and 267) by my learned colleague who keeps "A Conveyancer's Diary." It may be that a great deal of what the writer of the letter says would not be applied by him to suggestions for simplifying leases and tenancy agreements; there is this difference between conveyances on sale and lettings, that in the former case there are normally "professional brethren" who will "recognise the conventional form and will not tinker with it overmuch," and the further difference that it is in the nature of things that less tinkering is possible when the whole of the grantor's interest is being conveyed. The writer of a letter signed "Managing Clerk II," published on 7th September (90 Sol. J. 429), who divides conveyances into those that could and those that could not be simplified with advantage, includes leases among the latter; and I think that in this case it is the long lease or sale by way of lease that the writer has in mind, and he might approve departure from traditional forms when the ordinary rack rent grant is made by means of a lease or tenancy agreement.

This kind of modification has in fact been and often is made by skilled, or semi-skilled, or unskilled draftsmen; and let me say at the outset that while I believe that the precedents to be found in most books on the subject are due for simplification, I do not propose to put in a plea for what might be called the *Beron* school of conveyancing. By way of refreshing readers' memories, I would recall that in *Zimbler* v. *Abrahams* [1903] 1 K.B. 577 (C.A.), the court construed a document in these terms: "I, the undersigned, S. Beron, have let to Mr. Abrahams the house situate at 24 Morgan Street, Commercial Road, E., at a weekly rental of 23s., and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return him the £6 he has paid me on taking possession of the house.—S. Beron." True, it is possible to find in this document an adequate description of parties, a satisfactory identification of parcels, some words of demise, a habendum, a reddendum, and perhaps one or two covenants and a proviso; but its effect was indeed doubtful, and while the Court of Appeal negatived the proposition that it created a weekly tenancy, and decided that it evidenced or had the effect of an agreement for a lease which could be specifically performed, the judgments did not elect between the possibilities of a void attempt to create an immediate demise for Mr. Abrahams' life or an agreement to grant such.

But those traditionalists who may have sniggered at Mr. Beron's grammar may do well to consider that of part of the usual precedent for a lease, the part I have in mind being the reddendum. Sometimes separated from the habendum ("To hold the said premises hereinbefore expressed to be demises, with the appurtenances . . . unto the lessee . . . and assigns from, etc.") by a full stop, sometimes not, the reddendum runs: "Yielding therefor . . ." or "Yielding and paying therefor . . ." I suggest that many a grammarian would have some difficulty in parsing this phrase, and strongly suspect that it originated as a translation of Latin documents in vogue when rent was more easily recognised as something reserved out of the produce of the land, and that the "yielding" refers to the land rather than to the tenant. At all events, one simplification which would, I suggest, prove advantageous would be to substitute "at the rental of" or, in apt cases, to omit the reddendum altogether and express the whole obligation in what is called the covenant to pay rent.

I say "what is called" because in my view there is much to be said for dropping the word "covenant" with its biblical flavour and substituting "undertaking" or "promise." This would hardly be open to the objection voiced by

"Managing Clerk" that simplified and more intelligible drafts mean far longer documents.

But, while I do not share his view that the client should be converted to the ways of the profession and not *vice versa*, and consider the analogy he draws between a conveyance and a medical prescription a false one, I must agree that simplification of many of the "covenants" themselves, e.g., that for quiet enjoyment, might mean additional verbiage. Nevertheless, it may be that if the tenant in *Re Warriner, Brayshaw* v. *Ninnis* [1903] 2 Ch. 367, had concentrated on the "clear yearly rent" of the reddendum (a case in which that part should not be omitted) and not tried to understand the "pay and discharge all rates, taxes, assessments and impositions whatsoever, whether parliamentary, parochial or otherwise, that may become due or assessed in respect of the messuage premises and garden during the tenancy (property tax only excepted as aforesaid)" of the covenant to pay outgoings, she would not have made herself liable for £118 draining nuisance expenses in addition to an aggregate, for the whole term, of £162 rent. The same applies to the defendant in *Stockdale* v. *Ascherberg* [1903] 1 K.B. 873, and it is these examples that I have in mind when I dispute the validity of an analogy between a doctor's prescription and a draft lease.

Again, the proviso for re-entry is, in its traditional form, unnecessarily obscure. I cannot see what objection there can be to expressing in apt and simple words its true nature and effect as a right (qualified by law) to forfeit the tenancy, by which the landlord is given additional security for the payment of rent and performance of tenant's covenants.

Neither "Managing Clerk" nor "Managing Clerk II" had occasion to advert to the rule by which the tenant pays the costs of lease and counterpart; admittedly this is often modified by local custom, but it does mean another distinction between leases and other conveyances, and has some bearing on the question of simplification. The rule itself, like the traditional reddendum, probably has its roots in the past, and is a survival from the days when the part was far more essential to the tenant's welfare and peace of mind than was the counterpart to those of the landlord. Its existence is probably bad for business, in that it encourages amateurs to try their hands. But as long as it does exist, I, disagreeing with "Managing Clerk's" view that clients will be unwilling to pay for documents expressed in simple language, feel that when a tenant does make himself liable for the costs of an instrument subjecting him to a vast number of obligations and restrictions, he should be given every opportunity of understanding what those obligations and restrictions are.

TO-DAY AND YESTERDAY

September 9.—On 9th September, 1803, Joseph Doran, a man employed in the King's Ordnance in the Lower Castle Yard in Dublin Castle, was tried on a charge of having participated in Robert Emmett's rising. He was said to have been seen marching with a party of insurgents and carrying a pike on each shoulder. The evidence against him turned on the testimony of a boy. It was unsatisfactory and he was acquitted.

September 10.—Next day, 10th September, Thomas Donnelly, Nicholas Farrell, Laurence Begley and Michael Kelly were tried for their part in the rising. There was evidence that they had been captured with pikes in their hands, but their defence was that these had been forced on them by the insurgents. They were, however, all convicted and hanged.

September 11.—In September, 1917, Sir John Simon brilliantly defended Lieutenant Malcolm, charged at the Old Bailey with the murder of a shady foreign adventurer going by the name of Count de Borch, with whom his young wife had become infatuated while he was absent on active service in France. The outraged husband had gone to the man's lodgings with a whip and a revolver and had shot him dead. As de Borch had a revolver in a drawer there was some basis for suggesting self-defence on the part of Malcolm, and the jury readily accepted the possibility and acquitted him on 11th September. The people in court gave three cheers when the verdict was announced.

September 12.—In 1698, Mr. Justice Eyre of the Court of King's Bench was seized with colic at the end of the circuit at Lancaster. He died on 12th September and was buried in the vault of his family in the church of St. Thomas at Salisbury. A costly monument to his memory was erected at Lancaster. Robert, his son and heir, who was Recorder of Salisbury at the time of his father's death, afterwards became Chief Justice of the Common Pleas.

September 13.—On 13th September, 1817, the future Lord Campbell wrote to his father: "It is amazing how little parliamentary distinction does for a man nowadays at the Bar. Brougham went to the York Assizes this summer. How many briefs had he? Two! What were they? One in an undefended cause, the other in a writ of inquiry before the undersheriff! Unless there should be some public convulsion, I doubt whether he is ever likely to hold any high office in the state. He has no character for discretion. But he recovers himself surprisingly, and he has so much energy that he is sure to maintain a high station in the community."

September 14.—On 14th September, 1734, "one Bowers, an alehouse man, and Captain O'Neal and his men were tried at Hick's Hall for enlisting men into foreign service. It appeared by the evidence that in July last the Captain, having engaged some men in pretence of employing them in harvest work in Kent, agreed with the master of the ship 'Thomas and Mary,' for two guineas, to carry himself and four of his pretended servants, viz., three Irishmen and one Englishman, to Calais, telling the master they were to work in some mines of his in France. Under these and the like pretences he got them landed in that country where they were immediately committed to a file of musketeers . . . The Captain and his men were found guilty and Bowers acquitted. This offence, by an Act of Queen Anne, was made high treason, but, expiring in three years, it hath been since deemed only a misdemeanour."

September 15.—On 15th September, 1742, "a sailor was condemned by a court-martial held on board the 'Dreadnought' for deserting from the 'Prince Frederick' at Carthagena and ordered to be executed."

TEMPLE HUNTINGS

A weekly journal recently published without attribution a story which in its original form belongs to the legend of Lauriston Batten, K.C., who died in July, 1934, at the age of seventy-one, after practising for many years in the Admiralty Division. The tale goes that, in opening a case before the Court of Appeal, he observed that it was disputed whether a certain seaman was at the material time "as drunk as a lord or as sober as a judge or in that happy intermediate condition of a Lord Justice of Appeal, who is more than a judge but less than a lord." Lauriston Batten was both in appearance and in temperament a sporting character, and another part of his legend concerns his "pupils' parties" at his chambers in King's Bench Walk. At these periodical celebrations the crowning feature of the proceedings is said to have been the turning loose of several rats to be hunted with terriers wherever they took refuge. This seems like an echo of a far earlier age in the Inner Temple when, in the course of the elaborate Christmas celebrations in the sixteenth century, part of the proceedings was as follows: "A huntsman cometh into the Hall, with a fox and a purse-net, with a cat, both bound at the end of a staff; and with them nine or ten couple of hounds, with the blowing of hunting horns. And the fox and cat are by the hounds set upon and killed beneath the fire." A recent book has reminded us that till the reign of Louis XIV there were periodical celebrations in Paris at the Place de Grève, the place of execution, at which cats were burnt alive with feasting and fireworks and music.

MILITARY FLOGGING

The Times has lately published some extracts from its columns of a hundred years ago relating to the military flogging case at Hounslow which created a considerable national sensation in 1846. A trooper of the 7th Hussars had been flogged at the barracks there, having been condemned to 150 lashes for hitting his sergeant on the chest with a poker. The sentence was carried out by two farriers in the presence of the surgeon of the regiment, and at the end of the proceedings the man was able to walk to hospital with little help. He died, however, about a month later. After a regimental post-mortem examination, a

certificate was signed to the effect that death resulted from inflammation of the pleura and was in no way connected with his punishment. There was, however, great excitement in the neighbourhood and, despite the opposition of the local military authorities, a coroner's jury sat at the George the Fourth Inn on Hounslow Heath to hold an inquest. The jury had already viewed the corpse in its coffin at the barracks, but after some evidence had been taken it was exhumed for a further medical examination. After a good deal of conflicting evidence on the part of the surgeons, the jury returned a verdict that the deceased died from the mortal effects of a severe and cruel flogging. They added that they could not " refrain from expressing their horror and disgust at the existence of any law amongst the statutes or regulations of this realm which permits the revolting punishment of flogging to be inflicted on British soldiers and at the same time the jury implore every man in this kingdom to join hand and heart in forwarding petitions to the legislature praying in the most urgent terms for the abolition of every law, order and regulation which permits the disgraceful practice of flogging to remain one moment longer a slur upon the humanity and fair name of the people of this country." This was not the first protest. In June, 1810, William Cobbett had been condemned to a fine of £1,000 and two years' imprisonment for some very severe remarks published in his Weekly Political Register on the flogging of five soldiers of a militia regiment under a guard of the German Legion.

COUNTY COURT LETTER

Gifts in Contemplation of Marriage

In *Hulbert* v. *Morris*, at Trowbridge County Court, the claim was for the return of an overmantel, two tea services, a salad set, jugs, a wall clock, a French sideboard, candlesticks, a sugar basin, wine bottles, vases, a flower bowl and other articles, the alleged property of the plaintiff. The case for the plaintiff (who was aged thirty-nine) was that for seventeen years he had kept company with the defendant, and for twelve years they were engaged to be married. The engagement was broken off, first in 1934, and finally in 1939. The above articles were bought at various dates, as part of the furniture of the future home of the parties. As there was room in the attic at the defendant's home, the articles were stored there. They were not given to the defendant as presents for herself, either at Christmas or any other time. In 1940 the plaintiff joined the R.A.F., and was demobilised in August, 1945. He never asked for a return of the engagement ring, which cost £7. On hearing of the defendant's marriage to another man, in August, 1945, the plaintiff claimed the furniture. The case for the defendant was that the articles were given to her as presents for her own use. She was not fond of jewellery, and, therefore, the plaintiff gave her useful presents, even at Christmas. His Honour Judge Kirkhouse Jenkins, K.C., held that there had been a contract to marry, and the plaintiff gave the defendant gifts which one would expect a man to give his future wife. It was a term that the gifts should not be used before the marriage, and it was wrong for the defendant to use and break some of the goods. The plaintiff, however, knew of this, but did not object. In 1939 the engagement was finally broken off, and one would have expected the plaintiff then to have claimed the return of the ring and chattels. He did nothing, and by his conduct had abandoned a right to reclaim the goods, although the marriage had not taken place. Judgment was given for the defendant, with costs. Compare *Cohen* v. *Sellar* [1926] 1 K.B. 536, in which it was held that the ring and like gifts were given on the implied condition that, on the marriage not taking place (otherwise than by the fault of the donor), they are to be returned. It is to be noted also that by the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 3, the husband of a married woman is not liable for any tort committed by her, whether before or after marriage.

Greater Hardship

In *Williams* v. *Manson*, at Shrewsbury County Court, the claim was for possession of a house built by the plaintiff in 1928. On being transferred to Liverpool, the plaintiff in 1935 let the house to the defendant on a quarterly tenancy, on the understanding that the plaintiff should resume his occupation of the house when he retired, which he did in September, 1945. The defendant retained possession, however, and the plaintiff (having sold his house in Liverpool) was living with his wife and schoolboy son in a cottage, which they shared with the plaintiff's married son and his wife and child. The plaintiff's wife and younger son had to live in a fowl-house, measuring 24 feet by 12 feet, which was unfit for human habitation. The cottage contained four rooms and had cost the plaintiff £1,300, having an acre of land. The defendant's case was that he had a nervous breakdown in the summer of 1945, and was unable to find alternative accommodation. The plaintiff had paid £600 for his Liverpool house, and he sold it in 1945 for £1,100—in case the Government should control the price of houses. The defendant's household consisted of himself, his wife, his sister and two daughters. His Honour Judge Samuel, K.C., observed that the plaintiff had precipitated matters by selling his Liverpool house when aware of the housing shortage in Shrewsbury. The defendant was evidently a sick man, and could not share the house with the plaintiff. The greater hardship would be on the defendant, if he had to move. Judgment was given for the defendant, with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

German Subject's Occupation

Q. A is a German subject who was brought to this country when he was three years of age and is now forty years of age. On attaining the age of sixteen he was given the usual registration book, but no condition was imposed as to his carrying on any occupation, although a note of his occupation was made at the time by the police in the book. A now desires to start on his own account in a different occupation.

(*a*) Is the consent of the Home Office necessary ?

(*b*) Is it necessary to report the fact to the police and have the changed occupation endorsed in the registration book ?

A. Under the Aliens Order, 1920, Sched. I, cl. 4, an alien is required to register his occupation. Under Art. 6 (1) (*b*), he must, within forty-eight hours, furnish particulars of the occurrence of any circumstances affecting the accuracy of any particulars previously furnished.

Question (*b*) is, therefore, answered in the affirmative. The advice of the police should be asked in question (*a*). *Prima facie* the consent of the Home Office is unnecessary.

War Damage Contribution

Q. A client of ours, having obtained building finance and erected certain houses, arranged permanent loans on security of the houses, and with the money repaid the building finance. We have advised him that, as the money was not borrowed by him for the purpose of acquiring his proprietary interest in the land, or for the purpose of erecting the dwelling-houses, he is not entitled to look to the mortgagees for payment of any part of the war damage contribution in respect of the properties. Our client informs us, however, that he is aware of the case of a building society, which has lent money on permanent mortgage in exactly the same way, bearing part of the expense of war damage contribution. What is the liability, or otherwise, of the mortgagees in these circumstances ?

A. The query does not quite sufficiently " descend to details." First, to qualify for a partial contribution from a mortgagee, the dwelling-house must not be of greater taxable value than £150. Secondly, if two or more dwelling-houses are included in one mortgage, there is no liability on the mortgagee and, according to the decision of the Court of Appeal in *Ideal Life Assurance Co., Ltd.* v. *Hirschfield* [1943] K.B. 442, if the transaction concerns houses acquired at one time and all mortgaged at about the same time, though there was a separate mortgage on each house, the mortgagor has no right against any of the mortgagees. Presumably, the building finance was obtained on a general charge of all the houses being built, and, if so, none of the subsequent mortgages can be said to have been in substitution for a security to which the Act would have applied, and therefore none of them qualified for any partial contribution or indemnity from the mortgagee.

Joint Tenants—Stamp Duty

Q. A has purchased some property which he has had conveyed into the name of his wife, B, solely. The conveyance has been completed and stamped, *ad valorem*. B now wishes to have the property conveyed to herself and her husband, A, in fee simple, as joint tenants (survivorship to operate). Can the conveyance be drawn in such a way as to avoid payment again of full *ad valorem* duty ?

A. We suggest that if B conveys in fee simple to herself and A, as joint tenants, upon trust for sale, the trusts of the proceeds and rents and profits pending sale being declared to be for B and A, as joint tenants, the document will not attract a higher stamp duty than is attributable to half the value of the property. Adjudication will be required.

REVIEW

Probate and Estate Duty Practice. Fourth Edition. By EDGAR A. PHILLIPS, LL.B., of Llandaff and Carmarthen District Probate Registries, formerly of the Principal Probate Registry. 1946. London: The Solicitors' Law Stationery Society, Ltd. 37s. 6d. net.

Many good things remained in abeyance during the war; the fourth edition of Mr. Phillips' well-known work is not the least of them. The author has used the unavoidable delay to advantage, however, for the various war-time extensions of law and alterations of procedure are fully covered in this edition, and are indexed together under the heading "War Procedure"; the convenience of this arrangement, which gathers together many widely scattered changes, could not be bettered. As a guide to present practice in probate matters the book is remarkable for its completeness and practicality. It includes a table of fees and a chapter containing 150 forms. Appendices include all relevant statutes and rules and orders, and a list of war-time concessions in the administration of death duties. The effects of the Execution of Trusts (Emergency Provisions) Act, 1939, the Evidence and Powers of Attorney Acts, 1940 and 1943, and the Rules of Court made under those Acts, are concisely shown. The book is distinguished by its ease of reference and its careful explanation of practical points.

BOOKS RECEIVED

Weights and Measures Law for the Coal and Coke Trade. By R. A. ROBINSON, O.B.E., of the Middle Temple, Barrister-at-Law, formerly Chief Officer, Public Control Department, Middlesex County Council. pp. (with Index) 116. London: The Buland Publishing Co., Ltd. 15s. net.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1945–46 Volume, Pt. 10. London: Hamish Hamilton (Law Books), Ltd.

OBITUARY

MR. A. W. BERRY

Mr. Alfred William Berry, solicitor, of Messrs. Richardson and French, solicitors, of Thirsk, Yorks, died recently, aged seventy. He was admitted in 1905.

MR. S. H. CLAY

Mr. Sidney Herbert Clay, solicitor, of Retford, Notts, died on Friday, 23rd August, aged seventy-five. He was admitted in 1894, and had been Mayor of Retford six times. He was also Chairman of the Retford County Council.

MR. T. W. MITCHELL

Mr. Thomas William Mitchell, solicitor, of Messrs. Pilley and Mitchell, solicitors, of Bedford Row, W.C.1, died on Sunday, 8th September. He was admitted in 1891.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

The refresher course of lectures for members of the Association and other managing clerks returning from service in H.M. Forces which were held during the Hilary Term will be repeated during the coming Michaelmas Term. They will deal with conveyancing (including mortgages, trusts and also land registration procedure); litigation (including King's Bench, Chancery and Divorce practice); probate and administration practice, and will be given as before, by members of the Council of this Association.

Each lecture, lasting about forty-five minutes, and followed by fifteen minutes for questions and discussion, will be given at 6.15 p.m. in the Lord Chief Justice's Court at the Royal Courts of Justice, Strand, W.C.2. The first lecture will take place on Monday, 7th October.

A syllabus and time table for the lectures will be available in the course of a few days, and will also be posted to those applying for tickets.

The lectures are free to members, but a charge of 5s. (to cover postage and office expenses involved) will be made to non-members. Forms are available in this office and an early application is desirable, in view of the many requests which have been put forward for this further series to be arranged.

SIDNEY J. FOGDEN,
Hon. Secretary.

Maltravers House,
Arundel Street,
Strand, W.C.2.

NOTES OF CASES

HOUSE OF LORDS

Holmes *v.* Director of Public Prosecutions

Lord Simon, Lord Macmillan, Lord Porter, Lord Simonds and Lord du Parq. 4th July, 1946

Criminal law—Murder—Manslaughter—Provocation—Wife's confession of adultery confirming husband's suspicions.

Appeal from a decision of the Court of Criminal Appeal (*ante*, p. 371).

The appellant was convicted at Nottingham Assizes of the murder of his wife, and sentenced by Charles, J., to death. He had for some time suspected his wife of infidelity. A quarrel having broken out between them, the wife, after heated argument, admitted having been unfaithful. The husband thereupon seized a hammer-head and struck his wife violently on the head with it. As she lay on the ground, he, according to his own account, then, because he did not like to see her suffering, "put both hands round her neck until she stopped breathing," death thus finally being caused by strangulation. Charles, J., on that evidence, directed the jury that it was not open to them to return a verdict of manslaughter. The Court of Criminal Appeal approved the direction and dismissed the appeal. The prisoner appealed. Their lordships, after consideration, now delivered their reasons for dismissing the appeal.

LORD SIMON said that the House was unanimously of the opinion that Charles, J.'s direction was correct. The whole doctrine relating to provocation depended on the fact that it caused, or might cause, a sudden and temporary loss of self-control whereby malice, which was the formation of an intention to kill or to inflict grievous bodily harm, was negatived. Consequently, where the provocation inspired an actual intention to kill (such as the prisoner had admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation might reduce murder to manslaughter seldom applied. Only one very special exception had been recognised—the actual finding of a spouse in the act of adultery; but it had been rightly laid down that the exception could not be extended. That led to the question whether "mere words" could ever be regarded as so provocative to a reasonable man as to reduce to manslaughter felonious homicide committed on the speaker in consequence of such verbal provocation. *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1, did not pre-judge that question. Provocation by "mere words" might mean provocation by insulting or abusive language, calculated to rouse the hearer's resentment; but the proverb recalled that hard words broke no bones, and the law expected a reasonable man to endure abuse without resorting to fatal violence. It was in that sense that the statement in the old books that "mere words" (not being menace of immediate bodily harm) did not reduce murder to manslaughter was to be understood. There was, however, a different sense which might sometimes attach, for "mere words" might be used, not as an expression of abuse, but as a means of conveying information of a fact, or of what was alleged to be a fact. That must be the sense in which Blackburn, J., had spoken in *R.* v. *Rothwell* (1871), 12 Cox C.C. 145, when, in the course of summing up to a jury in the case of a man charged with murdering his wife, he went so far as to say that in special circumstances there might be such a provocation of words as would reduce murder to manslaughter, for instance, if a husband suddenly hearing from his wife that she had committed adultery and he having no idea of such a thing before were thereupon to kill his wife. It was to be noted that Blackburn, J., said "might," and not "would"; and the illustration had no resemblance to the facts of the case which he was trying. In his (Lord Simon's) view, however, a sudden confession of adultery without more could never constitute provocation of a sort which might reduce murder to manslaughter. The dictum attributed to Blackburn, J., and in cases which seemed to accept or apply it, could no longer be regarded as good law. Neither spouse, on hearing of an admission of adultery from the other, could use physical violence against the other which resulted in death and then urge that the provocation received reduced the crime to mere manslaughter. It was not necessary to decide in the present appeal whether there were any conceivable circumstances accompanying the use of words without actual violence which would justify leaving to a jury the issue of manslaughter as against murder. It was enough to say that the duty of the judge at the trial, in relevant cases, was to tell the jury that a confession of adultery without more was never sufficient to reduce an offence which would otherwise be murder to manslaughter,

and that in no case could words alone, save in circumstances of a more extreme and exceptional character, so reduce the crime. When words alone were relied on in extenuation, the duty rested on the judge to consider whether they were of that violently provocative character, and, if he was satisfied that they could not reasonably be so regarded, to direct the jury accordingly.

The other noble Lords concurred.

COUNSEL: *Sandlands*, K.C., and *Mrs. Lane*; *The Solicitor-General* (Sir Frank Soskice, K.C.), *Hawke*, and *Winn*.

SOLICITORS: *Ludlow and Co.*; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

Ocean Steamship Co., Ltd. *v.* Liverpool & London War Risks Insurance Association, Ltd.

Scott, Tucker and Bucknill, L.JJ.
4th June, 1946

Insurance (marine)—War risks—Warlike operation—Deck cargo carried and speed maintained in heavy weather owing to military necessity—Resulting damage to ship—Whether consequence of warlike operation.

Appeal from a decision of Atkinson, J. (*ante*, p. 19).

By a policy of marine insurance the plaintiffs insured their motor vessel "Priam" with the defendants, from 30th June to 29th December, 1942, against King's enemies' risks and war risks, including the consequences of warlike operations by or against the King's enemies. The vessel, being requisitioned by the Crown, was directed to sail from Liverpool to Alexandria with a cargo of high military importance. The prescribed route lay north of Ireland, west of the Azores and round the Cape. The amount of cargo to be carried was so great that the master permitted part of it to be carried on the foredeck solely on the ground of the military urgency, for he disapproved on principle of deck cargoes on winter voyages across the Atlantic Ocean. The ship encountered very heavy weather in the Atlantic between 7th and 13th December. The deck cargo had been properly made fast, but the heavy seas struck the cases and caused them to collapse in part, and a heavy tank bridge-layer slipped its lashings and was adrift on the starboard side of the deck. The movement of the cargo caused extensive damage to the hatch-covers and 800 tons of water entered the front hold. Repairs were effected and the cargo made fast again, but further heavy weather was encountered, the deck cargo again broke loose, damaging the hatch-covers, and a further 1,400 tons of water were shipped. The flooding of the hold caused ten of the contact fuses forming part of the cargo to explode, which damaged the hull. Throughout the heavy weather, while that damage was occurring, the master maintained full speed on the ground of the military urgency of the cargo, instead of heaving to or running before the wind as he would otherwise have done. Atkinson, J., found as a fact that the damage would not have occurred but for the stripping away of the hatch-covers by the loose deck cargo, and that, the ship being down by the head owing to the water which she had shipped, the master would not have forced her ahead through the heavy weather but for military necessity. The damage thus caused to the ship amounted to £1,632 10s. 10d., for which sum he gave judgment for the shipowners. The underwriters now appealed. (*Cur. adv. vult.*)

SCOTT, L.J., in a written judgment, said that he agreed with Atkinson, J., that the damage was caused by the two aspects of the ship's warlike operation, namely, the carrying of the heavy deck cargo of war material across the North Atlantic in winter, and the driving of the vessel through heavy seas in her condition of reduced buoyancy. This was a stronger case than *The Coxwold* [1942] A.C. 691, since the vessel had on board at all material times a potential danger and source of damage to herself in the presence of the heavy deck cargo. That was a deliberate addition to the dangers of the warlike operation in which the ship was taking part. He (Scott, L.J.) could see no difference, so far as the safety of the ship was concerned, between the stowage on deck of that particular cargo and the stowage on deck of a mine. If a mine so carried exploded because a heavy sea struck it, it could not be contended that the damage was not due to the warlike operation. The weather was undoubtedly severe and prolonged, but it caused no damage to the ship until the deck cargo came adrift. The vessel was an active participant and not a quiescent sufferer, because she was at all times under way and under command, and was doing her best to continue her warlike operation under adverse conditions. The policy insured against "the consequences" of warlike operations. The only task, therefore, in a dispute of this kind was to ascertain whether some particular consequence of hostilities or warlike operations was the proximate cause of the loss, the word "consequence" in the policy in effect meaning not "effect" but "cause." Although the final cause of loss was a peril of the sea, if it was the condition of the ship due to a war peril which made her succumb to the sea peril and thereby suffer damage, that damage was in an insurance sense proximately caused by the war peril. The appeal must be dismissed.

TUCKER, L.J., in a written concurring judgment, said that the correct approach in such a case was to ascertain all the circumstances and balance all the contributory causes. It was fallacious to place heavy weather in a separate category and to make its presence as a contributory cause of damage conclusive, either necessarily or in the absence of some special circumstance. The damage to which the marine misfortune of heavy weather had contributed, and without which it would not have occurred, was nevertheless the consequence of the warlike operation on which the vessel was engaged.

BUCKNILL, L.J., agreed.

COUNSEL: *Devlin*, K.C., and *H. L. Parker*; *Bateson*, K.C., and *A. J. Hodgson*.

SOLICITORS: *Hill, Dickinson & Co.*; *Bentleys, Stokes and Lowless*, for *Alsop, Stevens & Collins Robinson*, Liverpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Szalatnay-Stacho *v.* Fink

Scott, Somervell and Cohen, L.JJ. 5th June, 1946

Defamation—Libel—Plaintiff and defendant foreign nationals—Absolute privilege—Statements privileged in foreign country—Comity of nations—Public interest—Whether privilege applicable in United Kingdom—Qualified privilege—Allegations made to one official concerning another—Extent of duty to make report.

Appeal from a decision of Henn Collins, J.

The plaintiff was a civilian official of the Government, established in the United Kingdom, of a State allied to His Majesty, the territory of which had been overrun by the enemy. Grave charges against him having come to the notice of the defendant, an official of a military tribunal of that State, which tribunal was established by due authority in England, he caused statements to be taken from various persons, and forwarded a report, embodying all the charges made against the plaintiff, to the Military Office of the President of that State in England. In an action by the plaintiff against the defendant for libel, Henn Collins, J., gave judgment for the defendant, holding that the report was absolutely privileged and saying that in any event he would have upheld the defendant's plea of qualified privilege. The plaintiff appealed. (*Cur. adv. vult.*)

SOMERVELL, L.J., reading the judgment of the court, said that the public interest was the foundation of the principle on which official documents were absolutely privileged. It did not necessarily follow that a similar privilege attached to corresponding foreign documents. The comity of nations did not compel or entitle the courts of the United Kingdom, when entertaining proceedings for libel between nationals of a foreign State, to accord to the acts of officials of that State a general protection given by the law of that State but not by that of the United Kingdom. Absolute privilege, therefore, did not, in the opinion of the court, attach to the report. As for the plea of qualified privilege, the defendant had acted in good faith. He had had no reason to disbelieve the allegations which had been brought to his notice. As a military officer he was under a duty to pass on to higher authority allegations of disloyalty. It was within the scope of his duty of making such a report to have statements taken. He, as a military officer, would quite naturally pass the report to a military authority, notwithstanding that it related to a civilian. Qualified privilege accordingly attached to the report. It was no evidence of malice that the documents submitted as part of the report included one which recorded what was alleged to be mere scandalous hearsay. The defendant's duty was to forward to the appropriate authority the whole file relating to the plaintiff and not to make a selection. The duty of investigating the source of allegations improperly made lay with authority higher than the defendant. *Hart* v. *Gumpach* (1873), L.R. 4 P.C. 439, was distinguishable, because there everything had happened in the country whose law it was suggested might be applied to the documents there in question. The appeal must be dismissed.

COUNSEL: *Beney*, K.C., *Sir Valentine Holmes*, K.C., and *John Foster*; *Slade*, K.C., and *Arthian Davies*.

SOLICITORS: *Dehn & Lauderdale*; *Blyth, Dutton & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Doughty; Burridge *v.* Doughty

Roxburgh, J. 11th July, 1946

Will—Residue settled—Residue includes shares—Company's articles authorise distribution of surplus capital—Validity of article—Company makes capital distribution—Whether sums distributed capital or income.

Adjourned summons.

The testator, who died in 1941, settled his residuary estate upon trust to pay " the net income therefrom " to his wife, the defendant M, with divers remainders over. The residuary estate included 148 management shares of £1 each and 13,636 ordinary shares of £1 each in F, Ltd. The articles of association of F, Ltd. provided by art. 102 for the proportion in which the profits of the company were to be distributed by way of dividend between the management shareholders and the ordinary shareholders. Article 104A, which had been adopted by the company between the date of the testator's will and his death, authorised the company in general meeting to pass a resolution to the effect that any surplus capital moneys should be divided between the members of the company by way of capital distribution in proportion to their rights in the distributable profits of the company. On the 26th February, 1946, the company in general meeting resolved pursuant to arts. 102 and 104A to declare out of realised capital profits for payment to be divided amongst the members the sum of £99,100. By virtue of that resolution £12,222 6s. 8d. became payable in respect of the testator's shareholding in the company. The trustees of his will, by this summons, asked whether they ought to treat that sum as capital or income.

ROXBURGH, J., said that he must hold that the company had purported to make a capital distribution out of realised capital profits. The next question was whether the company had power to make any such distribution. It was submitted for the remaindermen that it had not, and reference was made to Lord Herschell's speech in *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, at p. 397. Reliance was also placed on *In re Bates* [1928] Ch. 682 and *Hill* v. *Permanent Trustee Company of New South Wales* [1930] A.C. 720. In his judgment, he was bound by the decision of Clauson, J., in *In re Ward's Will Trusts* [1936] Ch. 704 to hold that the observations in the earlier cases had not the effect for which the remaindermen contended, and that an article authorising capital distribution was effective. It seemed to him that there was no difference in substance between the article considered by Clauson, J., and art. 104A. He held that payments made pursuant to art. 104A were not part of the " net income " of the trust fund, but were accretions to the capital thereof.

COUNSEL: *Cecil Turner; Neville Gray*, K.C., and *A. C. Nesbitt; Wilfrid Hunt; Danckwerts.*

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Ponsonbys & Carlile and Booths*, Oldham; *Peacock & Goddard.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Dwyer and Another *v.* Mansfield

Atkinson, J. 28th March, 1946

Nuisance—Queues—Obstruction of neighbouring shops—Liability.

Action for nuisance tried by Atkinson, J.

The plaintiffs each carried on a business one on each side of the defendant's greengrocer's shop. They brought this action because they alleged that their businesses were interfered with by the queues for the defendant's shop which formed outside their shops. The building line of the shops was set back four feet from the highway, but the forecourt was indistinguishable from the pavement.

ATKINSON, J., said that in his opinion in view of *Harper* v. *G. N. Haden & Sons, Ltd.* [1933] Ch. 298, it would be very difficult to hold that a nuisance was established. Even if the queues opposite the plaintiffs' shops were a nuisance, it had still to be proved that they were something for which the defendant was to blame, an unlawful act, unnecessary and unreasonable and therefore unjustifiable. The defendant had a licence from the Ministry of Food to sell vegetables and fruit. In February, 1945, he had received a consignment of oranges which he was bound to sell to all comers, and for which queues had formed, but he had obtained permission to sell the oranges at the back of his shop, so that the queue could approach from an alley. The authorities showed that where a nuisance had been created by causing persons to collect together the defendant had always done something to create the crowd (see *Barber* v. *Penley* [1893] 2 Ch. 477, and *Lyons, Sons & Co.* v. *Gulliver* [1914] 1 Ch. 631). In *R.* v. *Carlile* (1834), 6 C. & P. 636, the defendant had placed effigies in his shop and so caused crowds to collect and the question arose whether that was at all necessary for the bona fide carrying on of his trade. No case had been found by counsel where a shopkeeper carrying on his business in the ordinary and normal way had been indicted for nuisance or had had an action of nuisance brought against him because queues formed to purchase goods from him. If such an action lay where a shopkeeper was carrying on his business in a proper way, distributing food essential for the public, and queues formed because the public were anxious to secure what was in short demand, there must have been thousands of shopkeepers liable to an action. It was the short supply of goods which had caused the queues to collect. The defendant had not done anything unnecessary or unreasonable. In any event the plaintiffs had failed to prove damage. There must be judgment for the defendant.

COUNSEL: *Crispin; Borneman.*

SOLICITORS: *Duthie, Hart & Duthie; J. H. Fellowes.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

C. *v.* E.

Sellers, J. 29th March, 1946*

Alien—Deportation Order—British nationality obtained by marriage—Order in force before service or execution—Aliens Restriction Act, 1914 (4 & 5 *Geo.* 5, *c.* 12), *s.* 1 (1)—*Aliens Restriction (Amendment) Act*, 1919 (9 & 10 *Geo.* 5, *c.* 92), *ss.* 1 (1), 2 (1)—*Aliens Order*, 1920 (*S.R. & O.*, 1920, *No.* 448, *as amended by No.* 2262), *arts.* 12, 21 (3).

Summons in chambers, treated by consent of the parties as the trial of the action.

The plaintiff, a Czech, was convicted in March, 1945, of offences in connection with the keeping of a disorderly house, and on the 6th April, 1945, the Home Secretary made a deportation order against her under the Aliens Restriction Acts, 1914 and 1919, and art. 12 of the Aliens Order, 1920. She was told of the order, but it was not then served. In January, 1946, the plaintiff was informed that the order would shortly be enforced unless she went voluntarily. On the 12th January, 1946, she was married at a register office to a farmer, who never lived with her and regarded the ceremony only as a business proposition. In March, 1946, the Home Office asked the police to execute the deportation order and they thereupon told the plaintiff that she might be deported three days later. They did not serve the order, the practice being to serve it on the actual arrest for deportation. A Czech lawyer stated in an affidavit that the plaintiff lost her Czech nationality on her marriage to a British subject, and that she had probably lost it in any event by a Czech decree of August, 1945. By s. 1 (1) of the Aliens Restriction Act, 1914, as amended by the Aliens Restriction (Amendment) Act, 1919: " His Majesty may . . . by order . . . impose restrictions on aliens, and provision may be made by the order . . . for disregarding, in the case of any person against whom a deportation . . . order has been made, any subsequent change of nationality." By art. 12 (6) (*c*) of the Aliens Order, 1920, which was made under those Acts, the Home Secretary can make a deportation order against an alien if he thinks it conducive to the public good. By art. 21 (3), a person against whom a deportation order under the Acts is in force shall " be deemed to retain his nationality as at the date of the order notwithstanding any intervening . . marriage or any other event." (*Cur. adv. vult.*)

SELLERS, J., said that it was contended for the plaintiff that she was no longer an alien, so that the Aliens Order no longer applied to her; that by s. 10 of the British Nationality and Status of Aliens Act, 1914, the plaintiff, as the wife of a British subject, was deemed to be a British subject; that, even if s. 1 (1) of the Aliens Restriction Act, as amended, enabled the Home Secretary to make orders disregarding any subsequent change of nationality, even British, no such order had been made, and art. 21 (3) of the Aliens Order had a different object and effect. It was argued for the defendant that art. 21 (3) gave him clear power to deport the plaintiff, since under it she was deemed, notwithstanding her marriage, to retain her nationality as at the date of the order. He (his lordship) was of opinion that the effect of art. 21 (3) was to disregard the subsequent change of nationality arising between the making and the execution of a deportation order, and he saw nothing in its language to indicate that it applied to a change from one alien nationality to another. He did not see how the comity of nations would be any more or any less affected in the one case than the other. He could not accept the argument for the plaintiff that the deportation order

* Reported by permission of the Judge.

was not in force because not served. It was valid and effective, and could, if the decision on the first point were right, be served on the plaintiff at any time, and she could forthwith be arrested and deported. There was no reason why a deportation order should be served in order to be in force, and there were good reasons against such a view. The order was in force because it had been made. It had not been carried out or revoked. The summons and the action must be dismissed.

COUNSEL: *Slade*, K.C., and *Ziar*; *The Attorney-General* (Sir Hartley Shawcross, K.C.) and *H. L. Parker*.

SOLICITORS: *Tarlo, Lyons & Co.*; *Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Stanley *v.* Stanley

Henn Collins, J. 11th July, 1946

Husband and wife—Joint account opened by wife—Wife's claim in respect of husband's drawings.

Action for money lent tried by Henn Collins, J.

The plaintiff, an American woman, and the defendant, a British naval officer, were married in the United States in January, 1944. As the husband had, in America, owing to currency restrictions, only his pay of £540 a year as an officer of the Royal Naval Volunteer Reserve, the wife opened a joint banking account for herself and him, on which she authorised him to draw for the expenses of them both. The wife having sued the husband for £3,683 as money lent, which included as its main item his drawings on that joint account, the husband contended that that arrangement did not constitute a contract, express or implied, but was an arrangement made in the ordinary course of the domestic relationship of husband and wife and not carrying with it any legal obligation.

HENN COLLINS, J., said that the husband maintained that there was no intention on either side that the transactions in question should result in any legal obligations. The court was not a court of honour, and to say that the husband ought to repay any advances made to him carried the matter no farther. The court was only concerned to ascertain whether the husband had undertaken any legal obligation to repay his wife. She did not contend that there had been any express agreement by the husband to repay anything drawn by him out of that account. Was there any implied agreement to that effect enforceable at law? The wife said that the joint account was opened in order to disguise the fact that she was, owing to the special circumstances, financing her husband. Could the opening of the account with the wife's funds, which took place within a few days of the marriage, when, it was only fair to assume, the parties had a high regard for one another and mutual trust and confidence, be said to constitute a loan to the husband exclusively, which he was under a legal obligation to repay? The wife might have assumed that, as a matter of moral obligation, her husband, whose income was accumulating in England, would repay her; but that was no concern of the court. If the parties had it in mind that they were entering into a legal bargain, why had the wife retained control of the account and not made her husband a direct loan? In his (his lordship's) opinion, no legal bargain had been intended or created. His lordship, having held the wife not entitled to recover the cost of putting on to the road the laid-up motor car which she lent to her future husband before the marriage, although he was liable for the cost of conveying it to New York, where the loan of it had taken place, from Worcester, Mass., where he had left it when he had finished with it, gave judgment for the wife for £107 18s. in respect of the items of her claim held to have been made out.

COUNSEL: *Gerald Gardiner*; *Sir Patrick Hastings*, K.C., and *John Foster*.

SOLICITORS: *Allen & Overy*; *Clifford-Turner & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1450. **Acquisition of Land** (Compensation for War Damaged Land) (Costs) Rules. August 22.

No. 1448. **Machinery, Plant and Appliances** (General) (No. 19) Order. August 27.

No. 1467. **Prosecution of Offences** Regulations. August 23.

No. 1462. **Southwell District Gas** (Borrowing Powers) Order. August 21.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Mr. H. J. CASEY has been appointed first Judge of Matrimonial Causes in the newly instituted Guernsey Divorce Court.

Professional Announcement

Messrs. GEOFFREY B. GUSH & CO., of 86, Rochester Row, Westminster, London, S.W.1, announce that Mr. PHILIP THORBURN has retired from practice and from the firm, and that as from the 31st August, 1946, they have taken into partnership Mr. JACOB NEWMAN, LL.B., who has returned from active service in the Army. The name and address of the firm remain unchanged.

Notes

The annual general meeting of the members of the Solicitors' Benevolent Association will be held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, 2nd October, 1946, at 1.45 p.m.

A rent tribunal, which covers Croydon, Beckenham, Beddington and Wallington, Bromley, Banstead, Carshalton, Coulsdon and Purley, Orpington and Penge, commenced operations on Monday, 9th September. Its offices are at 8, Wellesley Road, Croydon, and the members are Mr. C. R. Warren (chairman); Mr. C. M. Jennings (reserve chairman); Mrs. P. M. Dammarell; Mrs. W. J. Philpott and Mrs. N. J. Frost (reserve members). The clerk is Lieut.-Colonel J. McConville.

A rent tribunal has been set up to cover Oxford, Abingdon, Brackley, Woodstock, Bicester and the rural districts of Abingdon, Banbury, Witney and Brackley. It will operate from Tuesday, 10th October next. Its offices will be at Rooms 200–203, Clarendon Hotel, Oxford. Members are: Mr. J. R. Wood (chairman); Mr. W. G. R. Archer (reserve chairman); Mrs. M. E. Knight. Reserve members are: Sir Arthur Nelson, K.C.I.E., O.B.E., J.P., Lady Elizabeth Pakenham and Mr. J. E. Thomas. The clerk is Mr. L. C. Mien.

Letters of request are causing secretaries a considerable amount of work in closing the old account and opening a new one, as well as preparing, signing and sealing new certificates. If the securities are shortly transferred on sale or to other parties, labour and time involved are wasted, and it is suggested that persons concerned with the administration of estates should refrain from lodging letters of requests until it is considered likely that the securities will continue to be held by the personal representatives for at least some time.

Changing Guernsey's official legal language from French to English is likely to take twenty-five years. A plan suggested for a gradual changeover will be discussed by the States, the Island Legislature, next week, says *The Times*. The change has been considered by a special Royal Court sub-committee, who propose that certain exceptions should be made, such as the Lord's Prayer and the *Clameur de haro*, the Islanders' centuries-old form of protest against grievances. These will continue permanently to be read in French because of their historical associations.

The Museum of the Public Record Office, which was closed throughout the war, will be open again to the public on 16th September. The hours of opening are from one to four daily from Monday to Friday. When, at the outbreak of war, hundreds of tons of important historical documents were removed from the Public Record Office to the country, Domesday Book and the other contents of the Museum were the first to go. All have now been brought back, and are in their accustomed places; and the reopening of the Museum marks the return of the national archives to their own repository without a single loss by enemy action.

Wills and Bequests

Mr. E. H. Anning, solicitor, of Chingford, Kent, left £40,674, with net personalty £34,218.

Mr. Arthur Francis Verulam Wild, of Tankerton, Kent, solicitor, left £5,418, with net personalty £4,016.

Mr. H. S. Hawks, solicitor, of Hertford, left £34,901, with net personalty £28,858.

Mr. Ferdinand Philip Maximillian Schiller, K.C., of Temple Gardens, E.C., left £98,919. He left a picture, "The Trial of Moses," to Oxford University for the Ashmolean Museum; certain books and seventy-seven pieces of silver and plate to the Treasurer and Masters of the Bench of the Inner Temple; and other effects to Bristol Museum and Art Gallery.